

FALL 2007 • VOL. 7, NO. 1

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Title IX Levels Playing Field for Girls, But What About the Boys?

by Barbara Sheehan

As we celebrate 35 years since the passage of Title IX, a law that addresses gender discrimination in education, it continues to be a driving force for equality — and in some cases a cause for controversy — in schools around the nation.

What is Title IX?

Signed into law in 1972 by then-president Richard Nixon, Title IX prohibits sex discrimination in all education programs that receive federal funds — from elementary through higher education. Often, Title IX is associated with sports, and in fact it has had a huge impact on female athletes. However, Title IX also encompasses a number of other significant areas, such as access to higher education, education for pregnant and parenting students, and sexual harassment, to name just a few.

Under the law, a three-prong test is used to determine if a school is complying with Title IX. The three considerations are whether the school is: 1) providing athletic opportunities that are substantially proportionate to the student enrollment, or 2) demonstrating a continual expansion of athletic opportunities for the under-represented gender, or 3) fully and effectively accommodating the interests and abilities of the under-represented gender. In order

to qualify for federal funds, schools must meet any one of the three prongs.

Affecting women on and off the field

So what impact has Title IX had on women athletes? According to the Women's Sports Foundation, only one in 27 girls played high school sports before Title IX. In 2001, that figure was one in 2.5, an increase of about 800 percent.

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Denying Religious Expression: Upholding the Constitution or Religious Discrimination

by Cheryl Baisden

When it comes to constitutional rights under the First Amendment, which promises Americans freedom of speech, expression, religious belief and assembly, some of the most heated debates often center around religion in school settings.

In the past two years, courts in New Jersey and around the country have been asked to rule on lawsuits involving the constitutional rights of **evangelical** Christians in schools. While some see these recent cases as a sign of discrimination against the devoutly religious, others view the developments simply as the country's continuing struggle to define what qualifies as protected religious expression under the U.S. and state constitutions.

"What you find generally in these cases is that in most instances religious expression in school is permitted as long as it is voluntary (meaning attendance is not required and it's not a *>continued on page 4*

Respect

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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Likewise, female participation in college athletics has risen significantly. According to the National Collegiate Athletic Association, in 2005, 166,728 women participated in intercollegiate sports as opposed to 29,977 in 1972.

Off the field, as well, women have gained considerable footing since the implementation of Title IX. For example, according to the Institute of Education Sciences National Center for Education Statistics (IES), which is part of the U.S. Department of Education, the number of women enrolling in college increased by 25 percent from 1994 to 2004 alone. That compares to only a 16 percent increase for males in the same time period.

Further, according to the National Organization for Women (NOW), women earned just seven percent of all law degrees and nine percent of all medical degrees in 1972. By 2001, they received 47 percent of law degrees and 43 percent of medical degrees.

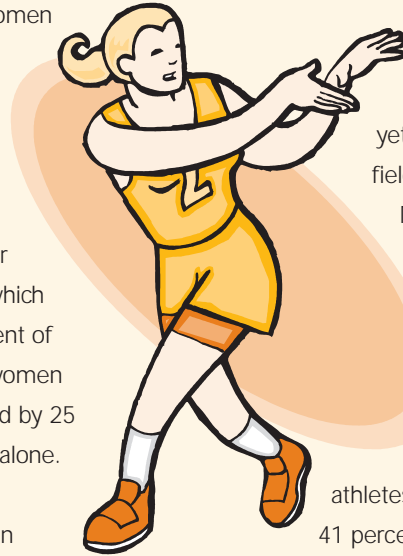
Today's challenges

Given the many changes in our schools and in our society over the past 35 years, some are asking about the relevance of Title IX today and whether it is still needed. Carol Parsons, associate director at the New Jersey State Interscholastic Athletic Association (NJSIAA), answers with an affirmative yes.

While the challenges to Title IX may be fewer today than in years past, the law provides an impetus to change when change is needed, she said, and gives people who feel they are being discriminated against something to "lean" on so that their complaints do not fall on deaf ears.

From an academic standpoint, some organizations, like NOW, argue that women "remain under-represented" in traditionally

male fields that lead to "greater earning power after graduation." For instance, NOW reports that in 2001, women received only 17 percent of all engineering and 18 percent of computer science doctorates.



With regard to sports, Title IX proponents say women have not yet achieved a fully level playing field. For example, I EXercise My Rights, a public service, informational campaign designed to educate the public about Title IX, reports that while 53 percent of the students at Division 1 schools are women, female athletes in Division 1 receive only 41 percent of the opportunities to play intercollegiate sports, 43 percent of the total athletic scholarship dollars, 36 percent of athletic operating budgets, and 32 percent of the dollars spent to recruit new athletes.

What about men?

With much of the focus of Title IX seemingly centered on empowering women, some critics of the law claim it has unfairly left some men on the sidelines. Often cited are cuts of men's sports programs to make room for more women's teams under the mandate of Title IX.

Take Jacob Torok, a swimmer on James Madison University's men's swim team who transferred from the University of New Hampshire (UNH). According to a *New York Times* article, Torok found out in September 2007 that James Madison was cutting the men's swim team. Unfortunately, the swimmer had transferred to his new university because the same cut, also due to Title IX, had been made at UNH.

According to *The New York Times*, Jennifer Chapman, who serves as senior captain of the women's cross-country team at James

Madison, organized a protest rally on campus after the news broke that the men's swim team and nine other men's teams were going to be cut. Chapman told *The New York Times* that she recognizes the importance of Title IX for women, but can't help wondering what these cuts will mean to those who are not interested in the bigger men's sports.

"Athletic departments have become a business run by accountants, not a place of opportunity run to educate students," Chapman said in *The New York Times*. "What are you saying to young boys involved in youth sports when you offer only six college sports for them? You're saying, 'you better play football or basketball, because if you run track or swim, you don't matter.'"

Advocating for men

An advocacy group called Equity in Athletics Inc. sued the Department of Education in March 2007, calling the so-called "three-prong" test to determine compliance with Title IX discriminatory against men.

In June 2007, James Madison University was added as a defendant in the suit after the university refused Equity in Athletics' request to postpone the cuts to its sports programs until after the lawsuit against the Department of Education was decided. In James Madison's case, the lawsuit alleges that its cuts not only violate federal equal protection laws but also Virginia's Human Rights Act and other state laws.

In response to issues like those raised by Equity in Athletics, Title IX advocates have consistently maintained, among other things, that schools have alternatives to cutting men's teams, for example, reducing inflated football and basketball budgets. Further, they argue that women's interest in sports is there if they are given opportunities.

Boys 'faring poorly'

While complaints about Title IX's impact on men seem to fall largely in the sports arena, in an editorial, titled "Title IX shouldn't be used as an academic weapon," which appeared in *USA Today*, Christina Hoff Sommers argued that the law is also impacting boys in the classroom. A resident scholar at the American Enterprise Institute, a non-partisan, not-for-profit institute dedicated to research and education on government and social welfare issues, Sommers wrote, "Activists create the illusion of continuing bias focusing on engineering, physics and math. It is true more men than women major in these subjects. But why blame the difference on bias?"

Sommers also points out, "Government officials are fretting over something they cannot change. Women's relative lack of interest in electrical engineering and metallurgy is matched by men's lower participation in social work, early childhood education, psychology, languages and more." What Sommers is more concerned about is, "The average 11th-grade boy has the writing skills of an 8th-grade girl."

Final call

Clearly, at the time Title IX was enacted, women were the underdogs in education programs. Ultimately, however, the goal of Title IX is to prohibit discrimination against either gender. To this end, Title IX will continue to serve as the official rulebook with the courts making the final call. ■

Rallying for female athletes: Cheer or chore?

Thirty-five years ago, when Congress enacted Title IX to promote gender equality in education, they might not have predicted the kind of debate that arose last January at Whitney Point High School in Upstate New York.

According to an article in *The New York Times*, Whitney Point cheerleaders, who had traditionally rallied on the boys' basketball team, found themselves also cheering on the girls' team after the mother of a female basketball player filed a complaint with the U.S. Department of Education. The complaint alleged that the lack of cheerleaders at women's games was unfair to female players and violated Title IX's "promise of equal playing fields for both sexes." As a result, the U.S. Department of Education mandated cheering at both girls' and boys' games.

Following the ruling at Whitney Point, "more than half of the aspiring cheerleaders dropped out," according to *The New York Times* article. Those who were left were forced to divide their cheering time between the girls' and boys' teams, cutting the cheering presence at boys' away games and leaving many questioning the logic of the ruling.

The New York Times reported, "Boys' basketball boosters say something is missing in the stands at away games, cheerleaders resent not being able to meet their rivals on the road, and even female basketball players being hurraed are unhappy."

According to the National School Board Association (NSBA), the ruling in New York followed a similar ruling in September 2006 regarding suburban Philadelphia schools. The NSBA further reported that the U.S. Department of Education received 64 complaints nationwide in 2006 concerning unequal levels of publicity given to girls' and boys' teams, a figure that includes the issue of cheerleading.

—Barbara Sheehan

graded activity), the school is not directly sponsoring it, and all religious and nonreligious groups are treated equally," explains Cherry Hill attorney David Ragonese. "The challenge is in uniformly applying those guidelines to every case that comes along."

Let her sing

A prime example of a First Amendment freedom of religious expression case recently was decided in New Jersey after an eight-year-old Frenchtown girl was banned from singing a hymn in an after-school talent show in 2005. School officials said the song, titled *Awesome God*, smacked of **proselytizing**, or trying to convert people to a certain religious belief. The hymn's lyrics included the line "His return is very close and so you better be believing that our God is an awesome God."

"The problem came with the words in the song that were not espousing what the child believed but rather indicating what other people should be believing," Frenchtown School Superintendent



Joyce Brennan told the *Christian Science Monitor*. "I have approved many religious songs in my day. But when you cross that line and say that someone else should believe this particular thing or else... that is why I made the decision I made, because it did cross the line."

According to Brennan, the student was offered an opportunity to pick a different religious song to sing, but she refused. The girl's supporters claimed her right to sing the song was protected under the U.S. Constitution's First Amendment. In December 2006, the court agreed, rendering a decision in the girl's favor.

"This was not a mandatory assignment. This took place at an after-school event that was voluntary, where the individual student could decide what song to sing or what skit to perform," said Edward Barocas, American Civil Liberties Union-

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Appeal Pending in Prayer Case at East Brunswick High School

In July 2007, East Brunswick High School football coach Marcus Borden, who was denied the right to participate in a silent prayer with his team before games, won his lawsuit against the school district. The court ruled that Borden's constitutional rights had been violated, since he wished to participate in the prayer, not lead it or require that all team members participate in it.

The school district appealed the case to the Third U.S. Circuit Court of Appeals where oral arguments were heard on October 3, 2007. Americans United for Separation of Church and State (AU), a **non-sectarian, non-partisan** organization that seeks to defend the separation of church and state and educate about religious freedom, is representing the school district in its appeal.

Americans United maintains in court documents that Coach Borden has a "history of engaging in prayer and other religious activities with players, cheerleaders, staff and others." AU's brief also states that when Borden was asked to stop leading prayers, "he manipulated the players and insisted they vote on having a supposedly 'student-led prayer.'"

"Coach Borden is supposed to focus on how his students play, not pray," Americans United Executive Director Rev. Barry W. Lynn said in a press statement. "This coach has a long history of meddling in the religious lives of players and others. He has overstepped his bounds, and the court should uphold the school district's right to rein him in."

The school district has the support of 18 organizations, including eight religious organizations, which filed amicus briefs on its behalf. The religious organizations, which include the Interfaith Alliance, the Anti-Defamation League, Hadassah, Jewish Women International, Muslim Advocates, Sikh American Legal Defense and Education Fund, Sikh Council on Religion and Education, and the Union for Reform Judaism, take issue with the court's ruling because it said that the coach's gesture of bowing his head was "secular" and "symbolic," not religious.

Their brief contends, "that finding is not only wrong as a matter of law and common sense. It is also deeply insulting to religious believers—who may belong to any number of different religious faiths—who understand the conduct at issue as embodying and conveying a deeply spiritual meaning."

As of press time a decision in the case had not been rendered. ■

Talk about Same-Sex Families: Inappropriate or Right on Target?

by Barbara Sheehan

Given the diverse make-up of families today and the pervasive climate of bullying, do public schools have a responsibility to address subjects like homosexuality and same-sex households? Or, is that a topic better left to parents?

That is the subject up for debate in many school districts across the nation, including in New Jersey.

Debate ensues in Evesham Township

New Jersey's Evesham Township School District made headlines in February 2007 when a video called *That's a Family!* was shown to third-graders. The video, on which the school district said it had received training from the State Department of Education, was part of the school's Health curriculum and showed elementary-aged children interacting in a number of different family settings, ranging from traditional and single-parent families to families with same-sex parents.

After learning the video was used, a number of parents in the district voiced their opinions, some being for the video and others against it. At issue for those against the video were its references to gay parents and the young age of the student audience.

One parent of a kindergartner told the *Burlington County Times* that the students were "too young to be shown what is being shown" and suggested the school was "pushing an agenda." Other parents, however, applauded the district for teaching tolerance.

As evidence of just how divided the community was on this subject, according to the *Burlington County Times* a February 2007 survey of parents in the Evesham School District, which reportedly compiled the responses of 90 percent of the third grade parents, revealed that 50.4 percent wanted their children to see the video, and 49.5 percent wanted their children to be excused.

In a message to parents and guardians that was released after the controversy erupted, the school district said, "... [T]he video does not discuss marriage or advocate any particular lifestyle. As part of our Health curriculum, the Evesham Township School District *does* include teaching of the many varieties of families that

represent our community. The concept is taught from the perspective of accepting and respecting all of our children..."

In fact, New Jersey's Core Curriculum Content Standards in Comprehensive Health and Physical Education specifically outline that by the end of second grade students should be able to "Identify different kinds of families and explain that families may differ for many reasons."

Still, after reviewing the matter further, in August 2007 the Evesham School Board voted 7-1 to pull the video from the curriculum altogether, reportedly to avoid further division in the district.

Court upholds school teaching

The debate at Evesham comes at a time when schools around the nation are grappling with similar issues. Perhaps one of

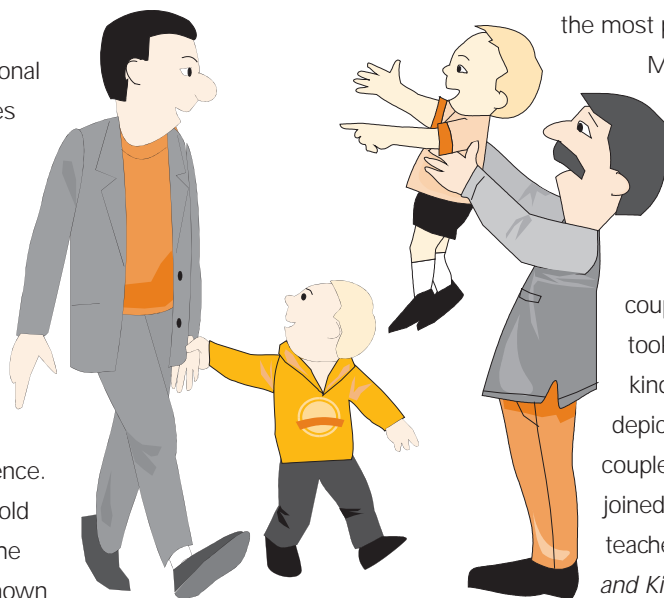
the most publicized cases involves a Lexington, Mass. school, which found its classes being questioned in federal court after two sets of parents claimed that the school's teachings violated their parental constitutional rights.

David and Tonia Parker, one of the two couples who brought the case, reportedly took issue with the school after their kindergartner brought home a book that depicted a gay family. The other plaintiff couple, Robert and Robin Wirthlin, allegedly joined the lawsuit after their first grader's teacher read a book to the class called *King and King*, which tells the story of two princes falling in love.

According to an article in the *Lexington Minuteman*, David Parker expressed concern that, by talking about gay families in the classroom, the school essentially was providing what young children might interpret as the school's "stamp of approval" on alternative lifestyle choices. Along with the Wirthlins, the Parkers asked the court for prior parental notification and the right to "opt out," or remove their children from the class, when these kinds of topics were being discussed.

After hearing both sides, the federal court in the case ruled against the Parkers and the Wirthlins, concluding that parents who do not agree with the teaching in public schools have the right to homeschool their children or send them to private schools.

Parker reportedly plans to appeal that decision.



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'No simple answers'

Sympathetic to some of the plaintiffs' concerns expressed in the Lexington case is David G. Evans, a school law attorney in Pittstown.

"From the parents' perspective, our taxes pay for the school. It's only fair that we get representation on what happens in school," Evans declared.

With that said, he recognizes it's a "balance," one that can best be achieved, he asserts, at the local level, with parents in individual schools and communities deciding what is best for their children's interests.

Len Deo, president of the New Jersey Family Policy Council, which advocates traditional family values, said that ultimately, it comes down to the question of who has the primary responsibility, the state or parents?

If schools are given the green light to talk about homosexuality at school, Deo questions where that discussion might end. Should schools then be talking about whether homosexuality is an **immutable** characteristic (in other words, one that is subject to change), he questions.

"It's a complicated issue with no simple answers," Deo concedes.

He contends that homeschooling and private schools — the options presented by the federal court in the Massachusetts case — are simply not legitimate alternatives for many parents who are "struggling just to make ends meet."

Leave it to parents?

So why not just stick to reading, writing and arithmetic in the public schools, and leave the more controversial subjects to parents, churches and other organizations to discuss?

According to Stuart Green, director of the New Jersey Coalition for Bullying Awareness and Prevention that would be unthinkable. Green said there is reason to believe that where gender identification and expression are concerned, which would include families with same-sex parents, children experience more bullying than any other population. And the consequences are more serious.

This population "really has the highest moral ground of demanding that society address [their concerns] adequately," Green said.

While he supports materials like the *That's a Family!* video, Green contends that these types of learning tools are just one component and are not beneficial. In fact, he said they can even

be detrimental unless systematic, school-wide, proactive programs are put in place and actively maintained.

By showing just a single video or having a one-time presentation, you're asking vulnerable children to "take off their armor," Green said. "If there's no follow-up, these kids are essentially left defenseless."

Not only are there moral implications, but when it comes to matters like the Massachusetts case, there are civil rights issues as well, said Elizabeth attorney Felice T. Londa.

In New Jersey, the rights of same-sex families to be equally represented in the schools is specifically protected by the New Jersey Law Against Discrimination (LAD), which makes it unlawful to subject people to differential treatment based on a wide variety of characteristics, such as race, creed, color and sexual orientation.

With this in mind, Londa contends, "if you're going to talk about families, you're going to talk about all kinds of families."

Everything is age-appropriate, Londa further notes. "We're talking about families, not bedrooms."

Across the nation

In addition to the Evesham and Lexington cases, there have been numerous other instances around the country where parents have expressed concern about gay-themed books and teaching materials.

In November 2006, for example, parents from Illinois and Missouri reportedly took issue with a book titled *And Tango Makes Three*, requesting that children be given limited access to the book in school libraries, according to an Associated Press article.

The book is based on a true story of two male penguins at New York City's Central Park Zoo that adopted a fertilized egg and raised the chick as their own.

In May 2005, the Oklahoma House of Representatives addressed similar concerns by passing a resolution calling on Oklahoma libraries to "confine homosexually themed books and other age-inappropriate material to areas exclusively for adult access and distribution."

Evans noted that one possible outcome, given the divisive nature of this issue, might be a stronger push in the future for a school voucher system, where parents could have more choice over the public schools their children attend.

In the meantime, the debate between schools and parents will likely continue with the courts weighing in when necessary. ■

Bring a Little Drama to Your Class to Promote Tolerance and Drug Awareness

Teachers looking for an innovative way to promote tolerance might consider having the George Street Playhouse's Touring Theatre perform one of its tolerance-based or drug awareness stage productions at their school.

The plays address such timely issues as school violence, tolerance, prejudice, drug abuse and peer pressure. All the performances are followed by a discussion with the audience facilitated by the actors. In addition, every student receives a student guide or "playbill," which mirrors the traditional theatrical playbill, preserving the theater experience for students. Printing of the "playbills" is sponsored by the New Jersey State Bar Foundation.

The Play's the Thing

The plays are as diverse as their subject matter and cater to different age groups. A description of each play follows.

New Kid (grades 1 – 6) is the story of an immigrant family from a fictitious place called "Homeland." When the family arrives in America, they discover a new culture and unexpected prejudice against "Homelanders." The Homelanders speak English while the Americans speak gibberish, demonstrating the complexities of cross-cultural communication and the implications of prejudice. Through comedy, this play addresses the themes of racism, prejudice, peer pressure, and conveys the need for tolerance.

Peacemaker (grades K – 4) is the story of the Blue People and the Red People who have lived on either side of a "Wall" for many years. Interaction between the people is forbidden, and both communities live in fear, suspicion and mistrust. When Simp, a

Red person, sees a Blue person for the first time, the automatic response is panic; once the pair interact, however, they learn they have a lot to offer one another, and an unexpected friendship begins. A parable of our diverse society, the play promotes the themes of tolerance and acceptance and advocates an end to prejudice on the basis of appearance and origin.

In Between (grades 6 – 9) explores issues of self-esteem, social pressure and the correlation between peer disrespect and school violence. The story focuses on a new student, Cue, who finds herself choosing between friendships with the popular Tad and the forgotten Barrett. The play examines the fragile identities and fickle emotions that make decision-making difficult for young people. The

use of popular music and youthful dialogue

holds the students' attention, allowing the idea that they have options and the courage needed to effect change in their own lives to be absorbed.

Wasted (Grades 6– 8) A cautionary tale of a young woman who looks back at her wasted life, her wasted relationships, and her wasted state of being, due to drugs.

Through flashbacks, we follow ambitious, smart, young Ashley as she enters into a devastating relationship with drugs and with Ty, the boy who introduces her to them.

And Then They Came for Me (Grades 5 – Adult) Co-commissioned with Young Audiences of New Jersey, this play expands on the familiar story of Anne Frank. The multi-media production explores the ordeals of two of Anne's surviving friends. As actors re-enact their experiences during World War II, this inspirational tale of survival brings history to life on stage.

For a brochure and/or booking information call the George Street Playhouse at 732-846-2895 ext. 115. George Street is currently accepting bookings for the 2007–2008 school year. ■



evangelical — believing in the authority of the scripture and the salvation of Jesus Christ. **homosexuality** — romantically desiring someone of the same sex. **immutable** — not changeable. **proselytize** — to try to convert someone to one's own religion, opinion or political party. **non-partisan** — not adhering to any established political group or party. **non-sectarian** — not aligned with any religion.

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New Jersey legal director. "It would be a different analysis if the principal sang the song *Awesome God* over the loudspeaker at school."

Refusing to participate

While the First Amendment protects students' rights to express their religious beliefs, it also guarantees them the right to refuse to participate in certain things because of those beliefs, according to Ragonese.

In the spring of 2007, Missouri State University settled a lawsuit out of court with a student who had been charged with discrimination by a faculty panel when she refused to complete a class assignment, claiming it violated her Christian beliefs. The class had been instructed to write letters to state legislators in support of same-sex adoptions, something the student's strict religious beliefs opposed.

"On many campuses, if you're an evangelical Christian, you're going to have to go through classes in which you're told that much of what you believe religiously is not just wrong, but worthy of mockery," David French, a lawyer with the Alliance Defense Fund, which had filed the lawsuit on the student's behalf, told *The Washington Post*.

The lawsuit was quickly settled by the university, which removed the discrimination charge from her record and agreed to pay the student's way through graduate school. The university also conducted a study of its School of Social Work, where the assignment originated, and found that many students were afraid to voice their differing opinions.

As a result of the lawsuit and the study, in April 2007 the Missouri Legislature passed a law requiring that all the state's public colleges report regularly on

how they protect students from "viewpoint discrimination."

Still Undecided

How religion is incorporated into textbooks remains an unsettled matter in a California case where several students from the Calvary Chapel Christian School were denied admission to the University of California because the textbooks used in some of their high school courses did not meet the university's requirements.

"We're not prohibiting them from teaching any of these courses and we're not saying that students

who take these courses aren't permitted to attend the university..."

university attorney

Christopher Patti told the Associated Press in Jan. 2007.

"We're just saying that (the courses) don't meet

our requirements. These textbooks

are very clear that their first priority is to teach religious principles and that science needs to take a backseat to that, and it's the judgment of the university faculty that that's not a very effective way to teach science."

Charles C. Haynes, a senior scholar at the First Amendment Center at the Freedom Forum, took the students' side when the lawsuit was filed in 2005. "They certainly have a right to say the student needs to take a foundational course," he told *The New York Times* in November 2005. "That's fair. But when you get into the business of saying how a particular subject is taught or if it has too much of a religious overlay, then I think you are crossing a line."

Ragonese sums the debate up easily.

"In a nutshell, the issue is, and always has been, that the First Amendment guarantees the right to freely express yourself," Ragonese said. "The problem is that sometimes what one person has to say isn't something another person wants to hear." ■

